

APPEAL NO. 021478  
FILED JULY 22, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 13, 2002. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on \_\_\_\_\_, and that she did not have disability.

The claimant appealed, basically on a sufficiency of the evidence basis, and asserted that the respondent (carrier) had not provided any "contradictory medical evidence" to refute the treating doctor's diagnosis. The carrier responded, urging affirmance. The treating doctor also wrote the Appeals Panel asserting that the claimant had been treated unfairly and complaining that the doctor had been excluded from testifying.

DECISION

Affirmed.

Regarding the treating doctor's letter, and other exhibits from the claimant excluded at the CCH, the carrier had objected that the treating doctor's name, and the claimant's exhibits, had not been timely exchanged. Parties must exchange documentary evidence with each other not later than 15 days after the benefit review conference and thereafter, as it becomes available. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c) (Rule 142.13(c)). Our standard of review regarding the hearing officer's evidentiary rulings is one of abuse of discretion. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain reversal of a judgment based upon the hearing officer's abuse of discretion in the admission or exclusion of evidence, an appellant must first show that the admission or exclusion was in fact an abuse of discretion, and also that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; see *also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). In determining whether there has been an abuse of discretion, the Appeals Panel looks to see whether the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 951943, decided January 2, 1996; *Morrow v. H.E.B., Inc.*, 714 S.W.2d 297 (Tex. 1986). We do not find the hearing officer's ruling to be an abuse of discretion, nor can we say that the hearing officer acted without reference to guiding rules and principles.

Regarding the merits of the case, although the hearing officer found the claimant "felt a pull in her lower back" on \_\_\_\_\_, the hearing officer also found this did not result in an injury. There were some inconsistencies regarding reporting the injury (reporting was not an issue) and the treating doctor's initial notes indicating a denial of "any recent trauma or surgery." The hearing officer is the sole judge of the

weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Daniel R. Barry  
Appeals Judge